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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,459	01/20/2006	Daniel Irisarri Navalpotro	HERRA6-73046	9805

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EXAMINER

BROWN, COURTNEY A

ART UNIT	PAPER NUMBER
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1616

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,459	Applicant(s) IRISARRI NAVALPOTRO, DANIEL	
	Examiner COURTNEY BROWN	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/20/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Amendments/Remarks filed on March 26, 2008 is acknowledged. Applicant elected with traverse Group I, claims 18-21. Applicant's arguments have been fully considered and are persuasive. The Restriction Requirement filed on February 26, 2008 has been withdrawn. Claims 1-17 stand cancelled. Claims 18-32 are pending and are being examined for patentability.

Priority

Priority to International Application PCT/ES04/00322 filed on March 26, 2003 is acknowledged.

Information Disclosure Statement

The information disclosure statement filed January 12, 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

An Article (a, an, the) is needed at the beginning of each claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 101/112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 28 and 29 provide for the use of a product for agricultural use, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 28 and 29 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App.

1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 26 and 27 recite the broad recitation "the solid support for granulation or pelletisation is an organic/inorganic substance", and the claim also recites "preferably" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims **18-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over La Critique Beige (GB 1148307) in view of Matsumoto Yoshizo (JP 5194067) and further in view of Iritani et. al. (US 5,545,418).

Applicant's Invention

Applicant claims a product for agricultural application in the form of granules or pellets, characterized in that it comprises 4-95%, 4-50%, or 13%(w/w) of vinasses and/or sludge measured as a dry extract of vinasses and/or sludge and the remaining, that is, 96-5%, 96-50%, or 87 % is a solid support.

Applicant claims a procedure for producing the aforementioned product comprising a step of addition of the vinasses in solid or liquid form to a solid support for granulation or pelletisation. Said solid support is an organic substance such as cane bagasse or composted organic matter or an inorganic substance such as clay, silicates, nitrates, or sulphates.

Additionally, Applicant claims a method for application of the aforementioned product involving: 1.) mixing, with other products of agricultural use in the form of granules or pellets comprising at least 4% (w/w) of vinasses and/or sludge measured as a dry extract of vinasses and/or sludge, and an organic or inorganic solid support; and 2.) applying, mechanically or manually, said mixture directly to the soil of the agricultural extension to be treated.

Determination of the scope and the content of the prior art (MPEP 2141.01)

La Critique Belge (hereinafter '307) teaches a granulated fertilizer based on Thomas slag containing as a binding agent sugar fermentation or alcohol distillation refuse from the production of sugars from molasses (column 1, lines 10-11 and 29-34, claim 18 and 24 of instant application). ('307) teaches that the refuse may be derived from beet-sugar or cane-sugar molasses (dry extract of vinasses of instant application). ('307) teaches that the Thomas slag may be admixed with other fertilizer materials containing nitrogen or phosphorous (column 2, lines 63-65, claims 18-22, 25, and 27 of instant application). ('307) teaches that the binding agent may contain a water soluble sulphate such as potassium sulphate in an amount between 12 and 18 % by weight on the total refuse (column 2, lines 66-76, claims 18, 19 and 27 of instant application). Additionally, ('307) teaches a process for preparing said granulated fertilizer (claims 11-17 of reference, claims 30-32 of instant application).

***Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)***

The difference between the invention of the instant application and that of ('307) is that the instant invention requires a procedure comprising the step of adding liquid vinasses to a solid support. For this reason, the teaching of Yoshizo is joined. Yoshizo teaches the use of shochu lees (the solid and liquid dregs produced from shochu distilled from barley, sweet potato or rice) waste material wherein it is made into a white-distilled-liquor waste fluid that is condensed, made into a paste, and mixed with a fertilizer and was made into a pellet via granulation ([0004], claim 23 of instant application).

Another difference between the invention of the instant application and that of ('307) is that the instant invention requires the use of cane bagasse or composted organic material as the solid support. For this reason, the teaching of Iritani et al. is joined. Iritani et al. teach that bagasse feed is preferably usable as an organic fertilizer (column 3, lines 4-12 and column 7, lines 44-50, claims 25 and 25 of instant application).

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of the cited references to arrive at an agricultural product comprising vinasses and an inorganic or organic support along with a procedure for producing and a method of applying said agricultural product. One would have been motivated to make this combination in order to receive the expected benefit of having an alternative method of producing the granulated agricultural product as taught by Yashizo and having an agricultural product that exhibits the ability to provide a nutrient supplement and humidity to the soil as taught by Iritani et al. (see column 7, lines 44-50). "It would be prima facie obvious to combine two procedures, each of which is taught by the prior art to be useful for the same purpose in order to form a resultant procedure that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art." In re Kerkhoven, 205 USPQ 1069 (C.C.P.A. 1980).

Although the aforementioned references do not teach the use of the specific weight (w/w) ratio ranges of vinasses and/or sludge and the solid support as in claims 20 and 21 of the instant application, absent a showing of unexpected results, it would be obvious to one of ordinary skill in the art to vary the concentration amounts depending on the desired result and plant species. Determining optimal concentrations of a composition's components is routine experimentation and is readily practiced by one of ordinary skill.

Conclusion

None of the claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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